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April 10, 2006

Matthew Cohn, Esq.
United States Environmental Protection Agency
Region 8
999 18th Street, Suite 300
Denver, Colorado 80202-2466

Re: Vermiculite Intermountain Superfund Site – Salt Lake City, Utah

Dear Matt:

As our initial response to your April 5, 2006 letter to counsel for the respective PRPs at the Vermiculite Intermountain ("VI") Site, I want to assure you that the Van Cott Profit Sharing Trust ("Van Cott Trust"), which formerly held an interest in the VI Site, has been and remains sincerely interested in attempting to negotiate a fair and reasonable resolution of this matter, and intends to negotiate in good faith with the other PRPs and/or EPA to that end. However, in prelude to the further negotiations suggested by the EPA in its April 5th letter, we feel the need to apprise the EPA, as well as the other PRPs, of the results of our ongoing research into certain key ownership factors related to the VI Site and the Van Cott Trust.

The Van Cott Trust is subject to the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §1001, et. seq., as part of an employee pension benefit plan (within the meaning of ERISA §3(2), 29 U.S.C. §1002(2), which plan is also an individual account plan under ERISA §3(34), 29 U.S.C. §1002(34). As part of an individual account plan, all assets of the Van Cott Trust are allocated to separate accounts for each participant and beneficiary of the Van Cott, Bagley, Cornwall & McCarthy 401(k) Profit Sharing Plan (the "Plan"). We had mentioned that such factual and legal inquiry and analysis were ongoing in both our August 20, 2004 Section 104e response and our supplemental January 13, 2006 letter. We believe that these factors we have identified materially affect the legal liability, as well as the ability to pay, of the Van Cott Trust, whether in a settlement context or a litigation context.

I. THE BENEFICIARIES' ASSETS ARE PROTECTED UNDER ERISA

Pursuant to Section 206(d) of ERISA, 29 U.S.C. §1056(d), and Section 401(a)(13) of the Internal Revenue Code ("Code"), Plan benefits cannot be assigned at law or in equity, or be subjected to attachment, garnishment, levy, execution, or other

legal or equitable process, subject to limited exceptions not applicable here. This anti-alienation provision appears to be a complete bar to the transfer of any pension benefit from the Plan or the Van Cott Trust. This is a basic requirement of ERISA and also a condition of the Van Cott Trust's tax-qualified status under the Code. Thus, we believe both ERISA and the Code prohibit creditors, including the EPA, from garnishing or executing on judgments against ERISA plan assets.

Moreover, ERISA §404(a)(1)(A), 29 U.S.C. §1104(a)(1)(A), and Code §401(a)(2) require that Plan assets be used solely for the exclusive purpose of providing benefits to participants and their beneficiaries, thereby prohibiting the use of Van Cott Trust assets for the payment of any third party claim. We believe the Van Cott Trust will not permit, and the trustees are not authorized, to apply Van Cott Trust assets to any other purpose, at least not until after the satisfaction of all the Plan's liabilities to participants and beneficiaries. To apply Van Cott Trust assets or other Plan assets to any use other than the benefits of participants and beneficiaries would, therefore, result in a violation of ERISA §404 and a transaction expressly prohibited by ERISA §406, 29 U.S.C. §1106.

II. DIFFERENT LEGAL ENTITIES

Additionally, the Plan in fact contains two separate trusts, the Van Cott Trust and another trust administered by Vanguard ("Vanguard Trust"). The only asset that has been held in the Van Cott Trust since prior to 2003, and which is currently held in the Van Cott Trust, is another parcel of property located in Salt Lake City. In our view, the EPA does not have a legal basis under CERCLA, or otherwise, to pursue its claim against the separate Vanguard Trust, which holds the assets of the self-directed deferred compensation 401(k) plan. The Vanguard Trust is a separate legal entity which never held ownership of the Utah Lumber property and therefore can have no legal liability under CERCLA as a past owner.

As stated at the outset of this letter, the Van Cott Trust and its representatives remain willing and interested in meeting with the other PRPs and, when appropriate, the EPA in order to try and work out a reasonable negotiated settlement in this matter, subject to the factors discussed above. As mentioned, our investigations into these issues are ongoing, and we will provide you with a more detailed explanation of both points once our work in these regards is completed.

Sincerely yours,

Paul D. Phillips
of Holland & Hart LLP

PDP:dc
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